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Attorney's Docket: 2000DE462
Serial No.: 10/602,392
Group: 1616REMARKS

The Office Action mailed August 10, 2006 has been carefully considered together with each of the references cited therein. The remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Claim Rejections Under 35 USC § 103

Claims 1-6, 8-11, 13-16 and 17 stand rejected under 35 USC § 103(a) as being unpatentable over Loffler (US 2001/0005737 or 6,489,395). This rejection is respectfully traversed.

Claim 7, 12 and 19-20 stand rejected under 35 USC § 103(a) as being unpatentable over Loffler (US 2001/0005737 or 6,489,395) in view of Rockl et al. (US 5,690,919). This rejection is respectfully traversed.

Crucial for the invention of Loffler are the oligoester emulsifiers (see paragraph [0038] of US 2001/0005737 A1). However, Aristoflex® AVC is not an oligoester but an anionic copolymer obtained by radical polymerization. Aristoflex® AVC is disclosed only in the examples of Loffler. These examples solely describe o/w emulsions, not the claimed w/o emulsions. There is no explanation or hint in Loffler why Aristoflex® AVC is contained in these examples or which function it has therein. It, therefore, could not be known to one of ordinary skill that, as described in the previously filed §1.132 Declaration, that cosmetic and dermatological emulsions having this copolymer exhibit a shiny appearance which was not only unexpected but significantly increases the inventive emulsion's aesthetic appearance, and, in consequence, results in greater customer acceptance. It can not be fairly said that the Loffler reference teaches that w/o emulsions comprising of from 0.1 to 1.0 % by weight of Aristoflex® AVC have a shining appearance and gives no hint to this effect because, simply put, the reference does not teach disclose or suggest a w/o emulsion having Aristoflex® AVC.

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In responding to Applicant's previous arguments, the Office finds the submitted §1.132 insufficient to overcome the rejection based on Loffler as the Office states:

the reference teaches cosmetic emulsions compositions containing 0.6-0.7% of ammonium acryloyldimethyltaurate/vinylpyrrolidone copolymer (Aristoflex AVC). Therefore, the Applicant's previous comparative example, which does not contain the polymer cannot be considered the "closest prior art."

Courteously stated, Applicant is of the position that the §1.132 Declaration is proper and is sufficient to overcome the rejections of record. Applicant's belief is predicated on the following reasons:

1. A comparative example with 0.6-0.7 wt.-% of Aristoflex® AVC in a w/o emulsion is not possible since such an example would be according to our invention and would not be a comparative example. Loffler discloses Aristoflex® AVC in o/w emulsions only.
2. A comparative example with 0.6-0.7 wt.-% of Aristoflex® AVC in an o/w emulsion does not provide a comparative basis since o/w emulsions and w/o emulsions are completely different. It might well be that the respective o/w emulsion has a shining appearance since o/w emulsions often have a shining appearance. However, one object of the present invention was to provide w/o emulsions that have a shining appearance. This means that if a person skilled in the art would prepare the compositions according to the examples of Loffler, and assuming such artisan find that these compositions have a shining appearance, such artisan would still not be in possession of knowledge necessary to conclude that a w/o emulsion containing Aristoflex® AVC would produce a shining appearance.

For at least the foregoing reasons, Applicant respectfully contends that the claimed invention is not made obvious in view of Loffler or Loffler in view of Rockl et al. Consequently, Applicant courteously seeks reconsideration and withdrawal of the rejections.

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In view of the forgoing amendments and remarks, the present Application is believed to be in condition for allowance, and reconsideration of it is requested. If the Examiner disagrees, she is requested to contact the attorney for Applicant at the telephone number provided below.

Respectfully submitted,



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